

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
BEAUMONT DIVISION

IDERIA WAYNE SMITH §  
VS. § CIVIL ACTION NO. 1:13-CV-325  
BRAD LIVINGSTON, ET AL. §

**MEMORANDUM ORDER OVERRULING PLAINTIFF'S OBJECTIONS AND ADOPTING  
THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION**

Plaintiff Ideria Wayne Smith, a prisoner confined at the Stiles Unit of the Texas Department of Criminal Justice, Correctional Institutions Division, proceeding *pro se* and *in forma pauperis*, filed this civil rights action pursuant to 42 U.S.C. § 1983 against Brad Livingston, Rick Thaler, Richard K. Alford, Gene A. Kroll, Darren B. Wallace, Kelvin D. Masters, Keith E. Gorsuch, Aaron J. Thompkins, William J. Pittman, and Mecheal J. Jackson.

The court ordered that this matter be referred to the Honorable Zack Hawthorn, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The magistrate judge recommends dismissing the action pursuant to 28 U.S.C. § 1915(e) as frivolous and for failure to state a claim upon which relief may be granted.

The court has received and considered the Report and Recommendation of United States Magistrate Judge, along with the record and the pleadings. Plaintiff filed objections to the magistrate judge's Report and Recommendation, and he filed an amended complaint.

The court has conducted a *de novo* review of the objections in relation to the pleadings and the applicable law. *See* FED. R. CIV. P. 72(b). After careful consideration, the court concludes the objections are without merit.

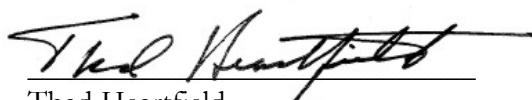
Plaintiff's due process claims are frivolous and fail to state a claim upon which relief may be granted because the disciplinary action did not result in a sanction that imposed upon a liberty interest. *Sandin v. Conner*, 515 U.S. 472, 483-84 (1995). Plaintiff alleges the defendants did not follow prison policies, but a prison official's failure to follow prison policies, procedures or regulations does not constitute a violation of due process. *Myers v. Klevenhagen*, 97 F.3d 91, 94 (5th Cir. 1996).

In his amended complaint, plaintiff complains about the conditions of his confinement in administrative segregation. Plaintiff alleges cockroaches were on his food tray when the tray was left when plaintiff was out of his cell. Plaintiff alleges he requested medical care, which was denied by physician's assistants. These claims are also frivolous and fail to state a claim upon which relief may be granted because plaintiff does not allege that any of the named defendants were personally involved in denying him medical treatment or leaving food in his cell. *Jacquez v. Procunier*, 801 F.2d 789, 793 (5th Cir. 1986).

### **ORDER**

Accordingly, plaintiff's objections (document no. 13) are **OVERRULED**. The findings of fact and conclusions of law of the magistrate judge are correct, and the report of the magistrate judge (document no. 11) is **ADOPTED**. A final judgment will be entered in this case in accordance with the magistrate judge's recommendation.

SIGNED this the 26 day of September, 2016.



Thad Heartfield  
United States District Judge